IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9876 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KHANDUBHAI RANCHHODBHAI PATEL

Versus

DIVISIONAL CONTROLLER GUJARAT STATE ROAD TRANSPORT CORPN

Appearance:

MR MUKESH H RATHOD for Petitioner

MR YOGESH S LAKHANI for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 11/01/2001

ORAL JUDGEMENT

1. Heard Mr. Anil C. Thakor for the petitioner and Mr. M.N. Devnani for Yogesh Lakhani for the respondent. This petition under Article 227 of the Constitution of India challenges the award dated 30.8.1991 passed by the

Labour Court, Surat in reference No. 278/89.

2. The petitioner was employed as conductor in the Gujarat State Road Transport Corporation, the respondent herein. On 1.12.1986 he was relieved from Bardoli Depot and was ordered to report at Surat. However, he failed to comply with the said order and remained absent without leave from 1.12.1986 till 19.1.1987. Departmental Inquiry was initiated against him and the chargesheet was sent to him by registered post at his residential address. He remained absent in the Departmental Inquiry. He was found guilty of remaining absent without any leave for the aforesaid period and by order dated 28.4.1987 he was dismissed from service.

3. The petitioner raised an Industrial dispute, which was referred for adjudication to the Labour Court at Surat. The Labour Court by its award dated 30.8.1991 rejected the reference. It appears that thereafter, the petitioner raised another industrial dispute in respect of the same subject and it was referred for adjudication to the Labour Court at Surat. However, the Labour Court by its order dated 9.2.1994 rejected the said reference on the ground that the previous reference in respect of the same subject had been dismissed and the second reference was not maintainable.

4. Thereafter, the petitioner filed the present petition challenging the first award of the Labour Court dated 30.8.1991.

5. The learned counsel for the petitioner submitted that the penalty of dismissal is too harsh and disproportionate and the same deserves to be set aside. He submitted that, at the time of admission, the advocate on behalf of the petitioner made a statement that the petitioner shall not claim backwages from the date of dismissal till the date this petition is finally decided and also shall not claim continuity of service for that period and in the circumstances of the case, the petitioner deserves to be reinstated in the service. He also cited the decisions reported in AIR 1994 SC Page 215 and 1993 (1) GLH Page - 399.

6. The learned counsel for the respondent submitted that the misconduct is proved and the Labour Court has given cogent reasons for not interfering with the order of dismissal and to exercise the discretion under Section 11(A) of the I.D. Act. He cited decision of this Court in GUJARAT MINERAL DEVELOPMENT CORPORATION LTD. VS. JAYANT SHRIRAM KALAL. 2000(3) GLH 419.

7. The petitioner did not challenge the legality and validity of the Departmental Inquiry in the proceedings before the Labour Court. His explanation was that since he was ill, he did not remain present for the period in question. However, the Labour Court has clearly observed that on 1.12.1986 the petitioner was relieved from Bardoli Depot and was ordered to report for duty at Surat but he did not comply with the said order. During the Departmental Inquiry notices were sent by registered post on 9/2/1987, 27/2/1987, 9/3/1997 but there was no response. In his statement of claim before the Labour Court, he stated that he remained absent because of illness but he did not give any oral evidence before the Court nor did he produce any medical certificate to show that he had been ill and bedridden during the relevant period. In the circumstances, the Court did not believe his explanation and held that the punishment of dismissal was not excessive or unjust.

8. Thus, the Labour Court refused to interfere with the order of dismissal, disbelieving the explanation of the petitioner for his absence. In the circumstances of the case, it cannot be said that the Labour Court has committed any illegality in rejecting the reference. The decisions cited on behalf of the petitioner do not apply to the facts of the present case.

9. The learned counsel for the petitioner states that the petitioner had made a representation to the Corporation in 1989 and the same is pending. It is for the Corporation to consider any representation that may be made or is pending and take appropriate decision in accordance with law at the earliest.

10. The result is that the present petition fails and is dismissed. Rule is discharged. No order as to costs.

(M. C. Patel, J.)

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